

October 2004

Volume 2

# CIVIL RIGHTS UPDATE

CIVIL RIGHTS ENFORCEMENT AND COMPLIANCE – (CREC)

## CREC MISSION STATEMENT

To provide leadership, direction, coordination, evaluation, and support to the Civil Rights efforts of the Animal and Plant Health Inspection Service; to implement and monitor our Agency's progress in achieving established policies and objectives; and to integrate Civil Rights into the APHIS management, evaluation and information systems and processes relative to nondiscrimination in Employment and Program Delivery.

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## ANIMAL AND PLANT HEALTH INSPECTION SERVICE ADMINISTRATOR'S CIVIL RIGHTS AWARD FY 2003

APHIS continues to provide support for the United States Department of Agriculture's commitment to Civil Rights and has made significant progress in the area of equal opportunity in employment and program delivery.

On Wednesday, October 6, 2004, APHIS held its 5<sup>th</sup> Annual Administrator's Civil Rights Awards Ceremony in Riverdale, MD. Dr. Ron DeHaven, APHIS Administrator, recognized managers, supervisors and employees for leadership and contributions in support of Civil Rights during Fiscal Year 2003.

APHIS honored the following employees from four program areas:

### AWARD RECIPIENTS

#### Animal Care

*Jerry DePoyster  
Joseph Nelson*

#### *Animal Care Equal Employment Opportunity Committee*

*Ralph Ayers  
Gloria McFadden  
Dr. Earnest Johnson  
Dr. Jodie Kulpa-Eddy  
Dr. Michelle Williams*

#### Marketing and Regulatory Programs-Business Services

*Jeanne Fleming*

#### Plant Protection and Quarantine

*Jose Ceballos  
Michael Lidsky  
Deborah Stewart*

#### Wildlife Services

*Peter Butchko  
Martin Lowney*

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION MANAGEMENT DIRECTIVE 715

For more than two decades the Federal government has maintained data by Professional, Administrative, Technical, Clerical and Other (PATCO) categories, and established hiring objectives, wherever under-representation existed. The approval of Management Directive 715 on October 1, 2003, changed the Affirmative Employment Program.

EEOC identified six essential elements necessary for creating and managing an effective Equal Employment Opportunity (EEO) program.

### Six Essential Elements for Structuring a Model EEO Program

- ✓ Demonstrated Commitment from Agency Leadership
- ✓ Integration of EEO into the Agency's Strategic Mission
- ✓ Management and Program Accountability
- ✓ Proactive Prevention of Unlawful Discrimination
- ✓ Efficiency
- ✓ Responsiveness and Legal Compliance

Contact the Civil Rights Enforcement and Compliance Staff on (202) 720-7830 for more information on this program.



## WHAT IS ALTERNATIVE DISPUTE RESOLUTION (ADR) AND HOW CAN IT SERVE YOU?

ADR offers the parties the opportunity for an early, informal resolution of disputes in a mutually satisfactory fashion. ADR usually costs less and uses fewer resources than traditional administrative or adjudicative processes, particularly processes that include a hearing or litigation.

Congress passed the Administrative Dispute Resolution Act of 1990 and the Alternative Dispute Resolution Act of 1996 as a means to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombudsman, or any combination thereof.

### What is ADR?

ADR refers to a continuum of processes and approaches that are designed to resolve disputes in a manner which avoids the cost, delay, and unpredictability of more

traditional adversarial and adjudicatory processes, such as litigation, hearings, and appeals.

The Equal Employment Opportunity Commission (EEOC) has authorized every agency to create an ADR program that is best suited for their particular office environment. The Department utilizes "Mediation" as the most popular form of ADR offered in the EEO process. Mediation is assisted negotiation. The Civil Rights Enforcement and Compliance Division also uses "Settlement Conferences" as an approach to resolve issues in dispute.

### Why is ADR Beneficial?

ADR offers the parties the opportunity for an early, informal resolution in a mutually-satisfactory fashion. Rather than receiving a decision from a third party, such as an Administrative Judge, the parties have the opportunity to write their own agreement in a manner which satisfies both of their needs.

The mediation process uses a problem solving approach to address conflict. The mediator has no vested interest in the outcome of the process and is not a decision-maker or judge. Rules of evidence do not apply. Testimony is not taken. Even if the parties do not resolve the dispute, mediation frequently clarifies and narrows the issues so that adjudication can proceed in a more rapid and focused manner.

Confidentiality contributes to the success and integrity of the mediation process. The ADR Act specifically protects communications between the mediator and the parties in private and joint sessions.

For more information on ADR center, Contact:

Myra Young, ADR Manager  
1-800-342-7231

Email: [myra.p.young@aphis.usda.gov](mailto:myra.p.young@aphis.usda.gov)

## ALTERNATIVE DISPUTE RESOLUTION CENTER

APHIS ADR Center  
EEO Counseling/Mediation  
Formal Complaints Mediation Service  
Treating Employees with respect, fairness, and dignity



If you feel you've been discriminated against, contact  
(301) 734-6317 or (800) 342-7231 for assistance

## NATIVE AMERICAN HIGHLIGHTS

November is Native American Heritage Month. This theme for this year is "Celebrating Our First Farmers". APHIS' Native American Heritage Month Program Celebration for 2004 will include a tour of the recently dedicated National Museum of the American Indian, located on the U. S. Mall in Washington, D. C. The museum tour is scheduled for Tuesday, November 9, 2004. This event is planned for Headquarters personnel; however other observance programs are planned for several field offices.

For more information about the APHIS Native American Program contact:

Gwendolyn Smith, APHIS Native American Program Manager,  
@ (301) 734-5584 or Email [gwendolyn.a.smith@aphis.usda.gov](mailto:gwendolyn.a.smith@aphis.usda.gov)



## MEETING THE "NO FEAR ACT" REPORTING REQUIREMENTS

The No FEAR Act reporting requirements have finally arrived. The many voices seeking a system of accountability for EEO discrimination have been heard. The official name of the act is the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002. The Act was the first civil rights law of the 21<sup>st</sup> century. It was signed on May 15, 2002 by President George W. Bush. The No FEAR Act requires that Federal agencies be accountable for violations of anti-discrimination and whistleblower protection laws. Previous to the Act becoming law, EEO settlements and judgments against a Federal agency were paid for from the US Department of Justice's (DOJ) general judgment fund. Under the Act, those payments will now come from a Federal agency's budget, rather than the DOJ fund.

Each Federal agency is required to post quarterly on its public Website, certain statistical data relating to Federal sector equal employment opportunity complaints filed with such agency.

The No FEAR Act, specifically, Section 301, has set forth the statistical data that each agency must post. It requires each agency to post statistical EEO complaint data each quarter for the current fiscal year, as well as the year end data for the five previous fiscal years for comparison purposes.

The No FEAR Act requires the following data to be posted:

- Number of complaint filers
- Number of repeat filers
- Complaint bases
- Complaint issues
- Processing time for each step of the complaint process; five steps were identified under the Act
  - counseling
  - investigation
  - hearing
  - final agency action
  - appeal
- Findings of Discrimination (with or without a hearing)

- The number of complaints that were filed in prior fiscal years

The numbers of complaints dismissed are also to be posted.

While this is a simplified breakdown of the posting requirements each agency must meet, the actual data and the purpose of the No FEAR Act is definitely NOT! EEOC and APHIS believe the data is both meaningful and useful in that it will provide important information on how each agency is performing and complying with EEO laws and provide full EEO complaint data disclosure. For more information contact:

Lauren Hill  
EEO Complaint Manager  
(202) 720-4622  
Email: [lauren.hill@aphis.usda.gov](mailto:lauren.hill@aphis.usda.gov)

## EEO COMPLAINT DECISIONS

Equal Employment Opportunity (EEO) decisions, like the entire EEO process, are subject to regulations outlined in the Code of Federal Regulations, Title 29 CFR 1614, Federal Sector Equal Employment Opportunity. Furthermore, EEO decisions rendered by the USDA Office of Civil Rights (OCR) or by an administrative judge of the Equal Employment Opportunity Commission may be appealed by an EEO complainant. This right to appeal is a major cornerstone in the EEO complaint process.

As an example, let's start at the beginning after an APHIS employee or applicant has worked with an EEO Counselor on their employment issue and no resolution is reached. If the employee or applicant (otherwise referred to as the complainant) decides to pursue their employment issue, they will file a formal EEO discrimination complaint with OCR.

This written complaint is subject to a decision of complaint acceptance or dismissal by OCR.

If accepted, the complaint will be investigated by a contract investigator.

If dismissed for failure to state a claim, or for other reasons as described in the EEO regulations, 29 CFR 1614. 107, the complainant's right to appeal this decision before the Equal Employment Opportunity Commission (EEOC) is explained in the dismissal letter and a copy of EEOC Form 573, Notice of Appeal/Petition is provided.

If the complaint is accepted for investigation, the complaint continues through the EEO complaint process and a Report of Investigation is issued to the complainant upon completion. If the complainant elects a hearing before an administrative judge at EEOC, the administrative judge has sole authority to issue a decision on the case based on its merits at any point in the hearing process.

The agency has (40) days to issue a final order based on the administrative judge's decision or the agency may file an appeal of the judge's decision to EEOC within that same time frame.

If the complainant elects a Final Agency Decision in lieu of a hearing, according to the regulations, OCR will issue the decision on the case within (60) days. A copy of the appeal form, EEOC Form 573, and instructions for the appeal to EEOC are provided to the complainant as part of that decision.

For more information concerning EEO decisions and the complaint process in general, go to

EEOC's website: [www.eeoc.gov](http://www.eeoc.gov)

For the regulations, look for "Laws, Regulations and Guidance" – click on "EEOC Regulations" and then click on "1614 Federal Sector equal employment opportunity".

For more information contact:

Mark Quiming  
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(202) 720-5475  
Email: [mark.quiming@aphis.usda.gov](mailto:mark.quiming@aphis.usda.gov)



## CREC STAFF DELEGATED AUTHORITY TO CONTRACT EEO COMPLAINT INVESTIGATIONS

In September 2002, the Associate Assistant Secretary for Civil Rights delegated authority to the APHIS Administrator and Director Civil Rights Enforcement and Compliance (CREC), to participate in a two-year pilot Equal Employment (EEO) Complaint Investigations Processing initiative. The initiative commenced in October 2002 and included provisions for the selection (from the GSA Schedule) and payment of contract investigators. The contractors are assigned by CREC to go onsite at various locations around the country to investigate complaints of employment discrimination. Under this initiative, CREC was also responsible for reviewing the reports of investigation for sufficiency and developing an internal evaluation of the contractor's work product.

The goal of the initiative was to assist USDA's office of Civil Rights (OCR) in reducing the USDA inventory of formal EEO complaints pending investigation. Since the beginning of the initiative, approximately 210 cases have been contracted out for investigation. Of the 210 cases assigned, 184 Reports of Investigations were completed, reviewed for sufficiency, and forwarded to complainants.

CREC demonstrated its ability to effectively and efficiently administer the EEO pilot complaint processing program by significantly reducing the OCR inventory of formal EEO complaints pending investigation. Our success with implementing this initiative resulted in the APHIS and other USDA Civil Rights Directors being granted permanent authority to administer the EEO Complaints Investigation Processing program.

The standard operating procedures developed by APHIS were adopted as a model by the Assistant Secretary for Civil Rights.

The CREC EEO complaints processing team conducted briefings on the Standard Operating Procedures for the other civil rights staffs, and CREC specialists also chair a multi-agency complaints investigation team that will be meeting quarterly.

For more information on this initiative contact:

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Equal Opportunity Specialist  
(202) 720-9931  
Email: [dennis.dew@aphis.usda.gov](mailto:dennis.dew@aphis.usda.gov)

## EQUAL EMPLOYMENT OPPORTUNITY DISCRIMINATION COMPLAINT SUMMARY FISCAL YEAR 2004

Fiscal year 2004 has been a busy year in the area of equal employment opportunity (EEO) complaint activity. APHIS started Fiscal year 2004 with 244 formal EEO complaints. We received 86 new complaints during the fiscal year, bringing the total to 330. During fiscal year 2004, 138 complaints were closed lowering the total to 190.

### Method of Complaint Closure Fiscal Year 2004

USDA Decisions "No Discrimination" – 54  
USDA Decisions "Discrimination" – 0  
Withdrawals by Complainant – 7  
Settlement Agreements (CREC) – 26  
Settlement Agreements (EEOC) – 9  
Dismissals – 19  
EEOC Decisions "No Discrimination" – 22  
EEOC Decisions "Discrimination" – 0  
Closures by move to Federal District Court – 1

For more information on these statistics, please contact:

Lauren Hill  
EEO Complaint Manager  
(202) 720-4622  
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## APHIS OUTREACH AND PROGRAM DELIVERY

**Authorities**

Departmental Regulation (DR) 4300-3, *Equal Opportunity Public Notification Policy* Section 4 (b) requires agencies to reach out in proactive ways to persons who have not participated equally in its programs and activities in the past. Under DR 4300-005 *Agency Civil Programs* Section 3 (2) agencies must establish information/public notification and outreach procedures in conjunction with the Office of Outreach to ensure that all eligible customers are informed of agency program benefits and encouraged to participate, and (3) Establish goals, including baselines and targets, to increase the participation of under-represented groups in agency programs; and ensuring that programs are responsive to the needs and interests of diverse audiences at all socioeconomic levels. DR 4300-006, *Civil Rights Policy for the Department of Agriculture*, Section 3(a)(2) directs agencies to ensure equal access and provide equal treatment in the delivery of USDA programs and services to all customers. The APHIS Administrator's Civil Rights Policy Statement states in part that "APHIS will continue to...engage those individuals and organizations that have not traditionally participated in our programs."

**What APHIS Programs are Covered?**

All APHIS programs and activities, whether they are provided directly by APHIS or by a recipient of Federal financial assistance from APHIS.

**APHIS and Civil Rights Enforcement and Compliance (CREC) Outreach Coordination:**

Each APHIS program area has an assigned Outreach Coordinator who is responsible for coordinating and reporting on that area's outreach activities. At the end of each fiscal year, CREC works with the coordinators to prepare an annual report highlighting outreach activities for each program area. That report details objectives and accomplishments in narrative and numerical reporting formats. Native American outreach activities are coordinated through the APHIS Native American Working Group (ANAWG), consisting of personnel from across all APHIS program areas. In FY2005, CREC plans to conduct an agency-wide survey to identify best practices and develop new strategies to expand outreach to farmers and ranchers.

**CREC Program Delivery, Outreach and Compliance Team**

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## CIVIL RIGHTS IMPACT ANALYSES (CRIA)

Departmental Regulation 4300-4 provides that agencies must conduct a civil rights impact review of their actions to determine if those actions "...adversely and disproportionately impact employees or program beneficiaries based on their membership in a protected group".

APHIS must complete written CRIAs and those CRIAs must be review by USDA's Office of Civil Rights (OCR).

The following are examples of the types of actions subject to this requirement:

- Rules, Notices or Regulations published in the Code of Federal Regulations or Federal Register.

- Charters for Councils and Boards.
- 1010 packages requiring approval by Department.
- Reductions in Force.
- Transfer of Function
- Special Situations Determined By CREC

APHIS must also complete written CRIAs on internal policy, program and activity documents. Although OCR does not review these CRIAs, a copy of the analysis should be maintained in the file.

Some examples are:

- Agency-specific instructions, notices and directives.

- Advisory boards not mandated by statute
- 1010 packages requiring notice to the Department.
- Special Projects (National, State, Local)

APHIS personnel should contact the Program Delivery Staff if they have any questions as to whether a civil rights impact analysis should be conducted on any particular action (see previous article for contact information).



## EEO COMPLAINTS PREVENTION

Managers often contact CREC for advice and information on how to prevent EEO complaints. The following common errors committed by managers and supervisors government wide were listed in a document provided to CREC. They are provided (with permission from the author) for your information.

### Common Errors

- Failure to document
- Failure to involve the agency's Employee Relations staff early enough in the process
- Confusing conduct with performance
- Disparate treatment
- Failure to take progressive discipline
- Misuse and nonuse of the table of offenses and penalties
- Ignoring the "Douglas Factors"
- Taking "Punitive" actions (keeping "secret book")
- Changing the rules retroactively
- Delaying the process and harmful error
- Lying and impeding investigations